



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI

1201 ELM STREET

DALLAS, TEXAS 75270

9292304



OCT 11 1983

Certified Mail: Return Receipt Requested No. P273 791 211

W. T. Womble, Esquire  
Crain, Caton, James, & Womble  
3300 Two Houston Center  
Houston, Texas 77010

*Handwritten notes:*  
OCT 11 1983  
11 11 1983

Re: Your letter of September 26, 1983, on behalf of Southern Pacific Transportation Company (Southern Pacific)

Dear Mr. Womble:

Thank you for your prompt response on behalf of Southern Pacific to our information request dated September 1, 1983. The report that you submitted will be useful in helping to ascertain the nature and extent of contamination at the Wallisville Road Site in Houston. In submitting Southern Pacific's response, you marked your letter "Private & Confidential Company Confidential" and the report of Dr. Eugene Brams enclosed with your letter is also marked "Confidential".

As you may be aware, Section 104(e)(2)(A) of CERCLA, 42 U.S.C. §9604(e)(2)(A) and Section 3007(b)(1) of RCRA, 42 U.S.C. §6927(b)(1), provide that responses to information requests made pursuant to those sections shall be available to the public unless entitled to confidential treatment as a trade secret or confidential business information.

This office has received a request from the Superfund Enforcement Section to review the documents you submitted in order to determine their entitlement to confidential treatment. A preliminary examination of these documents indicates that they relate only to hazardous chemical contamination on a parcel of land owned in part by Southern Pacific and fails to establish any relationship between the documents and Southern Pacific trade secrets. As you indicate in your letter, the report appears to have been prepared in anticipation of litigation concerning ownership of the property. As a general rule, given such circumstances, the documents would not be protected from disclosure to the public.

Pursuant to 40 C.F.R. 2.203(e)(4), you are hereby given an opportunity to comment on the following points on behalf of Southern Pacific prior to an agency determination of whether

these documents are entitled to confidential treatment. Your comments will be used in making any such determination. In providing comments, you should be aware that conclusory statements, unsupported by factual information, will be given little weight by the agency in making its determination on Southern Pacific's claim. Please provide information on the following:

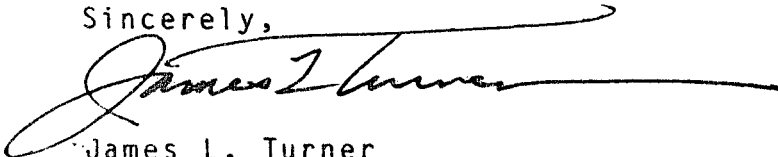
- (1) The portions of the information which are alleged to be entitled to confidential treatment;
- (2) The period of time for which confidential treatment is desired by Southern Pacific (e.g., until a certain date, until the occurrence of a specified event, or permanently);
- (3) Measures taken by Southern Pacific to guard against undesired disclosure of the information to others;
- (4) The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
- (5) Pertinent confidentiality determinations, if any, by EPA or other Federal agencies, a copy of any such determination, or reference to it, if available;
- (6) Whether Southern Pacific asserts that disclosure of the information would be likely to result in substantial harm to the business's competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects; and
- (7) Whether Southern Pacific asserts that the information is voluntarily submitted information as defined at 40 C.F.R. 2.201(i), and if so, whether and why disclosure of the information would tend to lessen the availability to EPA of such information in the future.

The period for comments is 15 working days after receipt of this notice letter. This comment period may be extended or shortened in accordance with 40 C.F.R. 2.205(b)(2). Your comments should be submitted to the Regional Counsel (60RC), U. S. Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270. EPA will construe a failure to furnish timely comments as a waiver of Southern Pacific's claim. We also call your attention to 40 C.F.R. 2.205(c) concerning confidential treatment of comments solicited by this notice.

Pursuant to 40 C.F.R. 2.205, the final determination of your claims will be made by the Regional Counsel, Region 6, EPA. If you have any questions, please call me at (214) 767-9975.

This information request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, Chapter 35 of Title 44 United States Code.

Sincerely,

A handwritten signature in dark ink, appearing to read "James L. Turner", with a long horizontal flourish extending to the right.

James L. Turner  
Attorney  
Office of Regional Counsel